SUPREME COURT OF THE UNITED STATES.

No. ~~358~~ 241. 1899

241

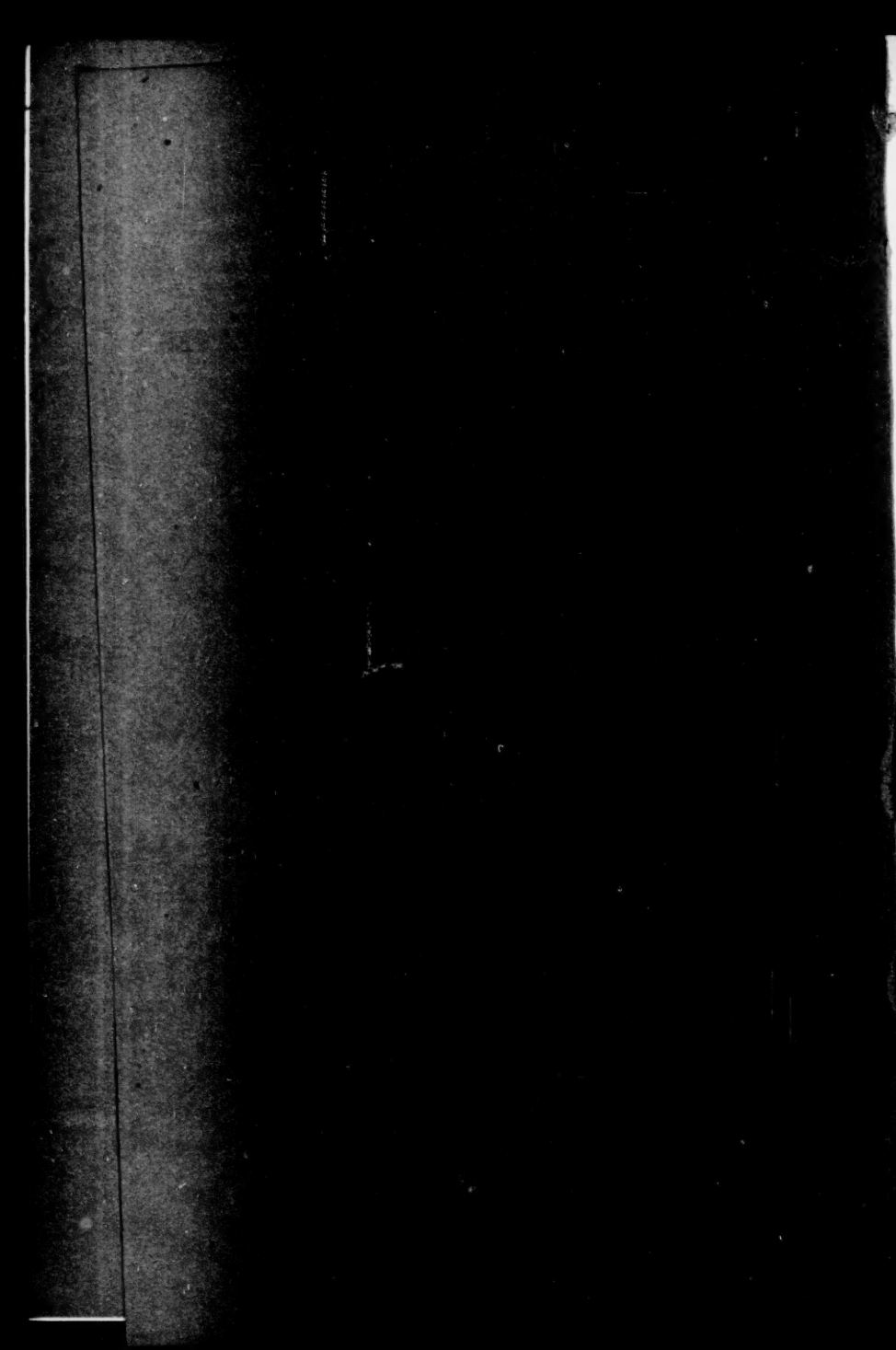
JAMES McNEAL, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF MASSACHUSETTS.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

GOVERNMENT PRINTING OFFICE.



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1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] *The President of the United States to the honorable the judges of the superior court of the Commonwealth of Massachusetts, greeting:*

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between the Commonwealth of Massachusetts, plaintiff, and James McNeal, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said constitution, treaty,
2 statute, or commission, a manifest error hath happened, to the great damage of the said James McNeal, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-four.

N. J. CLIFFORD,
Clerk of the Circuit Court of the United States.

Allowed by

[Fifty cent Rev. Stamp.]

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

3 *The United States of America to the Commonwealth of Massachusetts, greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the superior court of the Commonwealth of Massachusetts, wherein James McNeal is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Nathan Clifford, justice of the Supreme Court of the United States, this 27th day of May, in the year
4 of our Lord one thousand eight hundred and sixty-four.

NATHAN CLIFFORD,
Associate Jus. Sup. Court of the U. S.

[Fifty cent Rev. Stamp.]

On this second day of November, in the year of our Lord one thousand eight hundred and sixty-four, personally appeared C. Judson Merrill, constable of the city of Boston, Commonwealth of Massachusetts, before me, the subscriber, and makes oath that he delivered a true copy of the within citation to his excellency John A. Andrews, governor of the Commonwealth of Massachusetts, and Dwight Foster, att'y general of the Commonwealth of Massachusetts.

Subscribed and sworn to, the second day of November, A. D. 1864.

MUNROE STEVENS,
Justice of the Peace for the County of Suffolk.

[Five cent Rev. Stamp.]

Fees, service, and travel	$0 68
Copies	2 00
	2 68
Oath	20
	2 68

5 Know all men by these presents that we, Ezra Trull and John Norton, both of Boston, in the county of Suffolk and Commonwealth of Massachusetts, are held and firmly bound unto the Commonwealth of Massachusetts in the full and just sum of three hundred dollars to be paid to the said Commonwealth of Massachusetts, its certain attorney, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 27th day of May, in the year of our Lord one thousand eight hundred and sixty-four. Whereas, lately, at a superior court of the Commonwealth of Massachusetts, in a suit depending in said court between

the Commonwealth of Massachusetts, plaintiff, and James McNeal, defendant, judgment was rendered against the said James McNeal, and the said James McNeal having procured a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Commonwealth of Massachusetts, citing and admonishing to be
6 and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next: now the condition of the above obligation is such, that if the said James McNeal shall prosecute his said writ to effect, and answer all damages and costs, if he fails to make his plea good then the above obligation to be null and void, else to remain in full force and virtue.

EZRA TRULL. [SEAL.]
JOHN NORTON. [SEAL.]

Sealed and delivered in presence of
C. N. RICHARDSON.
A. RICHARDSON.

7 COMMONWEALTH OF MASSACHUSETTS, *Essex, ss:*

At the superior court begun and held at Newburyport, within and for the county of Essex, for the transaction of criminal business, on the second Monday of May, being the ninth day of said month, in the year of our Lord one thousand eight hundred and sixty-four:

The jurors for the Commonwealth of Massachusetts upon their oath present, that James McNeal, of Gloucester, in the county of Essex, at said Gloucester, on the first day of June, A. D. 1863, and on divers other days and times between that day and the day of the finding of this indictment, did keep and maintain a certain tenement there situate and then and there resorted to for illegal gaming, and then and there used by the said McNeal for the illegal sale and illegal keeping of intoxicating liquors, to the great injury and common nuisance of all the peaceable citizens of said Commonwealth there being, inhabiting, passing, and repassing, against the peace of the Commonwealth aforesaid, and contrary to the form of the statutes in such case made and provided.

And now the said McNeal is set to the bar and has this indictment read to him, he says that thereof he is not guilty, and for trial puts himself on the country. A jury is thereupon impanelled and sworn to try the issue, viz: Gustavus Andrews, foreman, and fellows, viz: Daniel N. Barrett, B. L. Batchelder, Nathan B. Blake, Charles E. Brown, Andrew J. Center, Nicholas Lattime, Charles S. Clark, Thomas E. Cox, Gilman Davis, George Dodge, and E. P. D.
8 Kimball, who, after hearing all matters and things concerning the same, return their verdict, and upon their oaths do say that said McNeal is guilty. It is therefore considered by the court that said McNeal be punished by paying a fine of one hundred dollars and costs of prosecution; and if said fine and costs are not paid within five days, that he be confined to hard labor for the term of three months in either of our houses of

correction for said county of Essex, and that he be committed in execution of this sentence.

Sentence passed May 25, 1864.

Attest : ASAHEL HUNTINGTON, *Clerk.*

COMMONWEALTH OF MASSACHUSETTS, *Essex, ss:*

9 I, Asahel Huntington, clerk of the superior court within and for said county, hereby certify that the foregoing is a true copy of record.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at Salem, in the county of Essex aforesaid, this [SEAL.] twenty-seventh day of December, in the year of our Lord one thousand eight hundred and sixty-four.

ASAHEL HUNTINGTON, *Clerk.*

COMMONWEALTH OF MASSACHUSETTS, *Essex, ss:*

I, Otis P. Lord, presiding justice of the superior court for said Commonwealth, do certify that Asahel Huntington is clerk of said superior court within and for the county of Essex, and that his attestation of the record and proceedings of said court, hereunto annexed, is in due form.

In witness whereof, I hereunto set my hand and the seal of said superior court this twenty-seventh day of December, A. D. [SEAL.] 1864. OTIS P. LORD.

10 No. 1593.—In force from May 1, 1864, to May 1, 1865.

BY AUTHORITY OF THE UNITED STATES.

E. pluribus [EAGLE] unum.

INTERNAL REVENUE LICENSE.

To all whom it may concern:

This license is granted to James McNeal, of the town of Gloucester, in the county of Essex, and State of Massachusetts, to carry on the business or occupation of retail dealer in liquors at No. —— Beach street, in the aforementioned town, county, and State, having paid the tax of twenty dollars therefor, conformably to the provisions of an act entitled "An act to provide internal revenue to support the government and to pay interest on the public debt," approved July 1, 1862, and the amendments thereto.

This license to be in force until the first day of May, 1865, provided the holder thereof shall conform to the requirements of said act, and of such other act or acts as are now or may hereafter be in this behalf enacted.

Given under my hand and seal at Salem, this first day of May, A. D. 1864.

Internal Revenue Collector's Office Salem, Fifth Collection District, Mass.

J. VINCENT BROWNE,
Collector of the Fifth Collection District, State of Massachusetts.

A true copy as on file.

Attest : A. HUNTINGTON, *Clerk.*

11 COMMONWEALTH OF MASSACHUSETTS, *Essex, ss:*

Superior court, May term, 1864.

1566.—Commonwealth *vs.* James McNeal.

I, Asahel Huntington, clerk of said court, do hereby certify that in the above entitled case the defendant pleaded not guilty, and on the trial of the same before the jury he admitted all the acts set forth and charged in the indictment as done by him, but offered in evidence in justification or defence thereof a certain paper or license from the government of the United States, an attested copy whereof, filed in the cases at the time of the trial, May 25, 1864, is hereto annexed. No question was made as to the genuineness or authenticity of said license, but the court ruled that such license constituted no defence or justification in law in this case, and a verdict was returned for the government.

In testimony whereof, I have hereunto set my hand and the seal of said court this 10th day of January, A. D. 1865.

[SEAL.]

ASAHEL HUNTINGTON, *Clerk.*

Filed January 3, 1865.